IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 506 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA
and
Hon'ble MR.JUSTICE N.G.NANDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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FORTUNE FILAMENTS PVT LTD

Versus

UNION OF INDIA

Appearance:

1. Special Civil Application No. 506 of 2001

MR MIHIR H JOSHI for Petitioners.

MR MUKESH R SHAH for Respondents

CORAM : MR.JUSTICE M.R.CALLA
and
MR.JUSTICE N.G.NANDI

Date of decision: 08/08/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.R.CALLA)

Rule. Mr.M.R.Shah waives service of rule on behalf of respondents. With the consent of learned counsel for parties matter is taken for final hearing today.

2. The learned counsel for the petitioners has submitted that they had purchased 'yarn' from the domestic market locally and therefore there was no question of payment of custom duty. On this aspect of the matter he has already been given a show cause notice as to whether the goods are liable for custom duty or not as also on the question of confiscation of the goods.

3. These aspects have to be considered as they stand because the learned counsel for the petitioners has not challenged before us the show cause notice dated 7.8.2000 issued by the Commissioner of Central Excise, Surat-I.

4. Now the question arises about the release of the goods which have been confiscated. In this regard the learned counsel for the petitioner has made reference to the letter dated 19.12.2000 sent to the petitioner by the Superintendent (ADJ), Central Excise & Customs, Surat-I. As per the said letter of Superintendent, Central Excise Surat I 538 cartons weighing 13204.000 Kgs of PFY 50/36 TBR (imported) made in Malaysia valued at Rs.7,67,760/have been released provisionally subject to condition that the petitioner should execute B-11 for full value of the seized goods backed by bank guarantee amounting to Rs.1,92,000/-valid till the conclusion of the case. A further condition has been imposed that the seized goods are dutiable and they should be released provisionally only after payment of the appropriate duty of customs. What is under challenge is this further condition mentioned in this letter dated 19.12.2000 to the effect that the goods are dutiable and they be released provisionally after payment of duty of customs. The learned counsel has contended that the petitioners would furnish the bank guarantee for the dutiable amount of customs duty and the further condition of payment of customs duty be modified accordingly.

5. The learned counsel for the respondents submitted that before the authorities the dispute is about 7,800 Kgs (300 cartons) of PFY . Therefore, this quantity of goods in case released even on provisional basis to the petitioner, other party who is claiming before the authorities may be aggrieved. There is no dispute about the fact that the entire goods were confiscated from the

petitioner and therefore the concerned authority may decide as to whom the balance quantity of goods of 7800 Kgs is to be released. Such question can be decided by the concerned authority after hearing both sides taking into consideration the material which may be placed on record by both sides. That may be so, but the fact remains that the entire quantity of goods was confiscated from the petitioner. If there is any third party claiming the balance quantity of goods it is open for such third party to proceed in accordance with law before appropriate forum but so far as the release of confiscated goods are concerned, the authority has to keep the fact in mind that it was confiscated from the petitioner. The concerned authority will therefore decide the question of release of balance quantity of confiscated goods i.e. 7800 Kgs in favour of petitioner in accordance with law. The learned counsel for the petitioners also submits before us that in case the claim of any third party is established and the concerned authority comes to the conclusion that the balance quantity of goods was not to be released in favour of petitioners, the petitioner is prepared to indemnify the department for the same at any stage. Concerned authorities shall decide this claim and provisionally release the balance of entire quantity in favour of petitioners in accordance with law within 15 days from the date of receipt of certified copy of this order. The quantity of goods in question shall be released to the petitioner after they furnish bank guarantee for the custom duty and after other conditions as mentioned in the letter are complied.

6. This petition is partly allowed and rule is made absolute accordingly. No order as to costs.

8.8.2001 (M.R.CALLA,J)

mty (N.G.NANDI,J)